
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

RICHARD S. ZABRISKIE,

Plaintiff,

vs.

GRANT MARSH et al.,

Defendants.

**ORDER AFFIRMING MAGISTRATE
JUDGE'S ORDER**

Case No. 2:10CV676 DAK

This matter is before the court on the Magistrate Judge's Revised Memorandum Decision and Revised Report and Recommendation, dated November 2, 2010 (the "Revised R&R"). On October 13, 2010, the Magistrate Judge issued a Report and Recommendation, recommending to the District Court that Defendants' Motion to Dismiss be granted based upon Plaintiff Richard Zabriskie's failure to respond to the court's Order to Show Cause. While it appeared from the court docket in the instant case that Plaintiff had not responded to the Order to Show Cause, the court eventually recognized that Plaintiff had indeed responded, but, due to a docketing backlog, Plaintiff's response was not reflected in the docket until after after the Magistrate Judge had issued the initial Report and Recommendation. Upon discovering that a response had been timely filed, the Magistrate Judge vacated the initial Report and Recommendation, considered Plaintiff's response, and then issued the instant Revised R&R on November 2, 2010.¹

In the Revised R&R, the Magistrate Judge recommends that Defendants' Motion to Dismiss be granted in part and denied in part. Specifically, the Magistrate Judge recommends that Plaintiff's claims brought pursuant to 18 U.S.C. § § 241, 245, and 42 U.S.C. § § 1983, 1985 be

¹ See Docket No. 16.

dismissed for failure to state a claim. As to Counts II and II, brought pursuant to U.S.C. § 3631, the Magistrate Judge recommends that Plaintiff be given fourteen days to provide a more definite statement.²

Plaintiff has not filed an Objection to the Revised R&R, and the time for doing so has expired. The court has reviewed the complete case file *de novo*, and the court agrees with the Magistrate Judge's recommendations and adopts the Revised R&R in its entirety.

Having considered the entire record in this case, the court hereby APPROVES AND ADOPTS the Magistrate Judge's Revised R&R in its entirety. Plaintiff's claims, with the exception of Counts II and III, are DISMISSED. As to Counts II and III, Plaintiff is directed to file a more definite statement by no later than December 28, 2010. Plaintiff's failure to file a more definite statement by December 28, 2010 will result in dismissal of the remaining claims. Defendants' Motion to Dismiss [Docket No. 17] is DENIED as premature.

DATED this 10th day of December, 2010.

BY THE COURT:


DALE A. KIMBALL
United States District Judge

² The Magistrate Judge "recommended" that Plaintiff's more definite statement be filed within fourteen days of the date of the Revised R&R. This response deadline, however, is ambiguous because a "recommendation" is made for the district judge to reject or accept, and it does not become effective until a district judge adopts the recommendation. Therefore, it is only now—as of the date of this Order—that the fourteen-day deadline begins to run. Consequently, Defendants' Motion to Dismiss, which was filed on November 29, 2010, and is based on Plaintiff's failure to timely file a more definite statement, is premature.